

## HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

**March 2, 1999 Hearing Room 357**

**8:30 a.m. Tapes 61 - 62**

**MEMBERS PRESENT: Rep. Mannix, Chair**

**Rep. Prozanski, Vice-Chair**

**Rep. Bowman**

**Rep. Gianella**

**Rep. Hansen**

**Rep. Simmons**

**Rep. Sunseri**

**STAFF PRESENT: John Horton, Counsel**

**Patsy Wood, Administrative Support**

**MEASURE/ISSUES HEARD: Public Hearing and Possible Work Session**

**HB 2505**

**HB 2479**

**HB 2480**

**HB 2436**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 61, A		

004	Chair Mannix	Calls meeting to order at 8:31 a.m.
<b><u>HB 2505 PUBLIC HEARING</u></b>		
008	Counsel Horton	HB 2505 makes cities who maintain correctional facilities responsible for fiscal support of those facilities and allows them to recover costs of incarceration from incarcerated persons under certain circumstances.
023	<b>Beth Vargas Duncan</b>	<b>League of Oregon Cities</b>  Testifies as neutral on HB 2505. Currently, the counties and cities have arrangements in place for the housing of, and reimbursement from, incarcerated persons. These arrangements should not be disturbed. We would also like to be sure counties charge for costs incurred by counties, and cities for costs incurred by cities. We would like to have Section 1, Part 1 removed from the bill. The remainder is acceptable.
045	Chair Mannix	Section 1, Part 1, changes ORS 169.150(1). Do you want all of the changes to ORS 169.150, including both (1) and (2) taken out?
049	Duncan	Just Part 1. Part 2 covers medical services.
053	Rep. Prozanski	It is my understanding that some of the cities are concerned under Section 1, Part 1 that they may be charged by the counties. Explains he is willing to delete lines 5-11 on page 1 of the bill to ameliorate those concerns. Discusses importance of leaving Section 1, Part 2 in the bill. In 1997, the existing statutes were expanded to allow the counties to seek reimbursement from convicted persons. HB 2505 will not expand either jurisdiction's ability to seek payment if person is not convicted.
087	Chair Mannix	You would like to remove lines 5-11 on page 1 of HB 2505?
088	Rep. Prozanski	Yes.
094	<b>Paul Snider</b>	<b>Association of Oregon Counties</b>  Indicates that the Association of Oregon Counties doesn't have a position on HB 2505. Asks if the committee removed lines 5-11 would lines 12-15 remain?
103	Chair Mannix	Yes.
105	Snider	Cities currently don't have jails. Some have temporary holding facilities. Sometimes cities put people in county jails and pay the charges for their custody. As I understand this bill, the counties would continue to bill the city for the city prisoners. The city could then seek reimbursement from the offenders.

114	Rep. Prozanski	Whatever the existing arrangements between the city and county are, they would stay intact. The city or county should be able to seek reimbursement if they meet the criteria under the statute.
124	Chair Mannix	The main point is to make sure the ultimate payer for the services gets a chance to recover costs.
<b><u>HB 2505 WORK SESSION</u></b>		
135	Chair Mannix	<b>MOTION: Moves to SUSPEND the rules for the purpose of adopting conceptual amendments..</b>
		<b>VOTE: 6-0</b> <b>EXCUSED: 1 ñ Bowman</b>
		Chair Mannix <b>Hearing no objection, declares the motion CARRIED.</b>
140	Rep. Prozanski	<b>MOTION: Moves to AMEND HB 2505 by deleting lines "5-11" inclusive on page 1.</b>
		<b>VOTE: 6-0</b> <b>EXCUSED: 1 ñ Bowman</b>
		Chair Mannix <b>Hearing no objection, declares the motion CARRIED.</b>
147	Counsel Horton	Clarifies that this deletion will restore the language previously in the statute.
153	Rep. Prozanski	<b>MOTION: Moves HB 2505 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0</b>
		Chair Mannix <b>Hearing no objection, declares the motion CARRIED.</b>

**REP. PROZANSKI will lead discussion on the floor.**

**HB 2479 PUBLIC HEARING**

161	Counsel Horton	HB 2479 adopts amendments to the rules of the Oregon Criminal Justice Commission which rank and classify crimes on the gridblock classification of new crimes.
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177	<b>Phil Lemman</b>	<b>Oregon Criminal Justice Commission (OCJC)</b>  Testifies and submits written testimony in support of HB 2479 ( <b>EXHIBIT A</b> ). Indicates that the rankings made by the OCJC have to be ratified by the legislature. Discusses the OCJC rankings of the crimes created by the 1997 legislature. Indicates that if the crime is a felony, a designation of whether it is a crime against persons is included in the rankings. Discusses the process used to complete the rankings and establishment of the specific rankings through reference to <b>EXHIBIT A</b> .
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274	Rep. Prozanski	SB 423 is listed in two separate places in the rankings. Is this correct?
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285	Lemman	Yes, SB 423 actually created three new crimes. Continues to discuss the Oregon Justice Commission rankings of the bills enacted by the 1997 legislative session. Discusses the modification of the Commission's rule making authority found in Section 2 of HB 2479. Indicates that replacing "directive" with "enactment" in ORS 137.667(3) will clarify the Commission's statutory authority to adopt changes to the guideline rules. These changes would automatically be reviewed by the next legislature to convene after the adoption of the change. Section 3 of HB 2479 establishes an effective date of November 1, 1999 for guideline rules changes.
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481	Chair Mannix	Why doesn't Section 2 also become effective on November 1, 1999?
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**Tape 62, A**

026	Lemman	There may be a question as to whether we have the authority to adopt the guideline rules changes on November 1, if we don't have the prior authority to do that.
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044	Chair Mannix	Further discusses the need to have the effective or operative date specified for Section 2. Indicates that the intent of the legislature was to speed up the process by authorizing guideline rules changes to new legislation which create crimes.
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059	Lemman	Discusses the difference between "enactment" and "directive" and agrees that legislative intent is appropriately reflected by the use of "enactment".
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079	Chair Mannix	Discusses State v. Bagley decision. Is HB 2479 a good vehicle to have language that would undo the Bagley decision?
086	Lemman	The Bagley decision does relate to sentencing and you certainly have the authority to undo that. As I recall the legislation, it was not a mandatory minimum sentence of 13 to 19 months. The legislature specifically allowed both upward and downward departure.
099	Chair Mannix	Would you offer some language to reestablish the legislative intent?
102	Lemman	Yes, we can work with the involved parties to do that.
103	Chair Mannix	Discusses possibility of overruling the OCJC's listing of SB 1076 and listing it as a person crime. Indicates that legislative intent was that it was a person crime. Asks that language be prepared to do this.
122	Lemman	Indicates that this will be done.
124	Rep. Bowman	Discusses SB 229 found in the Commission Minutes on Page 6 ( <b>EXHIBIT B</b> ). The Commission spent some time discussing whether this was a person crime or a non-person crime. What would the definition of encouraging Child Sex Abuse 3 be?
137	Lemman	SB 229 was 1995 legislation which was approved by the 1997 legislature, so we will have to look that up.
142	Chair Mannix	You were directed by the 1997 legislature to change the guidelines and you are just reporting here that you have done so.
143	Rep. Bowman	Thank you, that answers my concerns.
150	Rep. Prozanski	I would like to have a copy of the Bagley decision. Is it the Chair's intention to make Section 3 effective January 1, 2000?
155	Chair Mannix	No. The entire bill to be effective November 1, 1999.
168	Rep. Prozanski	Do we want to consider consistency in these dates?
174	Chair Mannix	The OCJC sentencing guidelines use November 1 as their operative date, but we can choose any date as long as we specify what it is.
186	<b>Bill Mayhar</b>	<b>Resident of Salem</b>  Testifies on HB 2479. Indicates that he believes that rules promulgated by OCJC

		are unconstitutionally masquerading as laws.
223	Chair Mannix	Outlines the rules on petitioning the legislature and on testifying in front of a committee on pending legislation.
230	Mayhar	Indicates that he doesn't believe the legislature has the right to do what they are doing. Believes the legislature is making rules and passing them off as laws.
255	Chair Mannix	You're getting off the track.
260	Mayhar	The judges and district attorneys make up rules and pass them off as laws. Discusses interfering with a peace officer.
275	Chair Mannix	This bill addresses whether or not that offense should be classified as a person or non-person offense.
277	Mayhar	It cannot be classified as either, because it is a violation and not a crime.
286	Chair Mannix	Thank you for your testimony.
289	Chair Mannix	Closes public hearing on HB 2479 and opens the public hearing on SB 2480.
<b><u>HB 2480 PUBLIC HEARING</u></b>		
297	Counsel Horton	HB 2480 represents a policy change for the OCJC. Non-Commission members of subcommittees of the Commission are currently entitled to reimbursement for travel expenses. HB 2480 will allow such reimbursement to occur subject to availability of funds.
310	<b>Phil Lemman</b>	<b>Oregon Criminal Justice Commission</b>  Testifies and submits written testimony in support of HB 2480 ( <b>EXHIBIT C</b> ). Discusses the history of the OCJC and asks that travel expenses be discretionary.
<b><u>HB 2480 WORK SESSION</u></b>		
342	<b>Rep. Prozanski</b>	<b>MOTION: Moves HB 2480 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 7-0</b>

	Chair Mannix	<p>Hearing no objection, declares the motion CARRIED.</p> <p>REP. BOWMAN will lead discussion on the floor.</p>
346	Chair Mannix	Closes work session on HB 2480 and opens work session on HB 2505.
<b><u>HB 2505 WORK SESSION</u></b>		
360	Rep. Prozanski	<b>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. BOWMAN to BE RECORDED as voting AYE on the MOTION: Moves HB 2505 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0</b>
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
369	Chair Mannix	Opens the public hearing on HB 2436.
<b><u>HB 2436 PUBLIC HEARING</u></b>		
371	Counsel Horton	HB 2436 requires that a defendant who is found unable to aid and assist in his own defense be transported to the State Hospital within 72 hours after the court makes such a determination.
405	Bob Joondeph	<p><b>Oregon Advocacy Center</b></p> <p>Testifies and submits written testimony in support of HB 2436 (<b>EXHIBIT D</b>). Indicates that the issue isn't just one of timely transport but often due to the State Hospital being unwilling or unable to admit the person as a patient. Indicates that an amendment may be needed to specifically require the State Hospital to accept the patient.</p>
<b>TAPE 61, B</b>		
022	Chair Mannix	If a person is transported to the hospital and the hospital determines that their acceptance is not appropriate for their treatment program, what would be done then?

027	Joondeph	Discusses his understanding of hospital policy. An initial evaluation by the hospital determines the proper treatment. They could determine that the person needs no additional treatment and then the person would be transferred back to the jail to stand trial. There are checkpoints over a three year period to continue evaluation before moving to civil committment.
041	Rep. Prozanski	Is there a definition of transport in the statute that might cover acceptance by the State Hospital?
055	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyerís Association (OCDLA)</b>  Testifies in support of HB 2436. Discusses the difficulties defense lawyers have seen with timely transfer of offenders unable to assist in their own defense.
072	<b>Stan Mazur-Hart</b>	<b>Director, Oregon State Hospital</b>  Submits written testimony and testifies as neutral on HB 2436 ( <b>EXHIBIT E</b> ). Expresses concern regarding population management of the State Hospital. In early 1998, there was a surge in forensic patients and overcrowding required a waiting list, prioritized by the seriousness of symptoms. In November of 1998, the Emergency Board allocated a new ward that eliminated the waiting list. Currently there is no waiting list. The crisis in the State Hospital census challenged all of us, but when time limits are mandated, we limit the freedom to manage problems.
122	Chair Mannix	Do you agree that a person who is found unable to help in his own defense should not be incarcerated without treatment?
126	Mazur-Hart	They should be in the best treatment site possible.
132	Chair Mannix	Wouldnít a mandated time limit assist your presentation to the Emergency Board regarding overcrowding?
134	Mazur-Hart	Discusses what is involved with opening a new ward including expense.
140	Chair Mannix	You mentioned the waiting list existed from March, 1998 to February, 1999. Was there increasing concern about the population level prior to March, 1998?
149	Mazur-Hart	Discusses commitment rate and the difficulties of predicting this rate.
156	Chair Mannix	It may be easier in the budgeting process to justify having some excess capacity if the population varies so dramatically. This time limit could assist with the need for some excess capacity to handle the swings in population.
164	Mazur-Hart	It is consistent with the concerns that we have.



166	Rep. Prozanski	What is capacity of new ward?
169	Mazur-Hart	Thirty beds.
170	Rep. Prozanski	Would a longer period of time for transport in HB 2436, for instance, 5 days instead of 3 days, make a difference?
179	Mazur-Hart	Time is the issue. The more time we have, the more flexibility is available to everyone.
187	Rep. Prozanski	Has anyone else heard from the eastern counties and their time frame for getting people to the hospital?
194	Mazur-Hart	The county sheriff would transport this population in a secure manner both to and from the State Hospital.
197	Rep. Prozanski	They do not rely on state shuttle service from one facility to another?
200	Mazur-Hart	There are some cooperative situations like that, but most come from the Valley and Portland, and in those jurisdictions the county sheriff does the transport.
207	Chair Mannix	What if there was a provision for the court to extend the time frame for transport for up to 48 hours for good cause? Perhaps the Superintendent of the State Hospital could have authority to extend the admissions requirement.
221	Rep. Bowman	How long has this individual been in jail before the determination was made that they could not assist in their defense?
230	Mazur-Hart	It depends, in many cases we've already seen the individual because the evaluation of competence was done in our facility. We did the evaluation under ORS 161.365, and then returned the offender to jail.
245	Chair Mannix	Do you need prior notice that an offender is being transported to your facility?
251	Mazur-Hart	Yes, we generally get this notice.
262	Rep. Sunseri	When a person is adjudged "unable to assist", is any mental health treatment provided to the offender in the local facility?
270	Mazur-Hart	Yes. There are minimal types of treatment, maybe just the continuation of their medication. During the time we were maintaining a waiting list, we moved those offenders to the top of the list, in counties that did not have any mental health services.

286	Rep. Bowman	If the State Hospital has custody of an individual, and they find the person can't assist in their own defense, why does that individual have to go back to jail and come before a judge to make that determination?
299	Counsel Horton	There is a difference between being able to aid and assist in your own defense and insanity. It is hoped that treatment will enable the offender to assist in their own defense.
311	Chair Mannix	Discusses the process of determining aid and assist capability.
325	Rep. Prozanski	There is a way around this. We do use video taping or simulcast from an outlying area for some proceedings.
343	Chair Mannix	What if we divide the solution into two phases: 1) videotaping proceedings, and 2) transport of offenders. We could add a 72 hour extension option due to facility overcrowding, however the hospital must accept the patient at the end of that time. Can you live with that?
355	Rep. Prozanski	The videotaping alternative is already in the law.
376	Mazur-Hart	It certainly addresses some of our concerns. We still have a concern with overcrowding.
387	Chair Mannix	The person may be better off in an overcrowded situation at the State Hospital while receiving treatment, than in the local jail.
397	<b>Dale Penn</b>	<b>Marion County District Attorney</b>  Testifies in support of HB 2436. Indicates he feels that the solutions being discussed are heading in the right direction. Indicates that care must be taken to ensure that due process rights are protected. Any process which limits the delay, while protecting due process rights, would be beneficial.
<b>TAPE 62, B</b>		
007	Chair Mannix	What is your position on allowing the court and/or superintendent of the receiving institution to extend the amount of time allowed for transfer an additional 72 hours?
012	Penn	All of the possibilities discussed are good.
114	Mazur-Hart	We expect to accept transfer under current law and that won't change.
016	Chair Mannix	Asks the committee whether they wish to proceed with conceptual amendments or an LC draft?

018	Rep. Hansen	Are we discussing the same 72 hour transfer deadline as appears in the bill?
019	Chair Mannix	72 hours for transfer is automatic in the bill. We are discussing an additional 72-hour extension with good cause shown.
025	Rep. Prozanski	On the second 72 hours, we should have the court pass on the 72-hour extension. It should not be just an administrative decision.
037	Penn	A letter from the Superintendent of the State Hospital should be enough.
049	Rep. Hansen	I have no problems in an additional 3 day extension, but I wouldn't want it to drag on any further than that.
<b><u>HB 2436 WORK SESSION</u></b>		
<b>055</b>	<b>Rep. Mannix</b>	<b>MOTION: Moves to SUSPEND the rules for the purpose of adopting conceptual amendments.</b>
		<b>VOTE: 7-0</b>
		<b>Chair Mannix</b>
		<b>Hearing no objection, declares the motion CARRIED.</b>
062	<b>Bill Mayhar</b>	Objects that he hasn't been allowed to testify.
064	<b>Gayner Johnson</b>	Objects to the proceedings.
081	Chair Mannix	Asks that Mr. Mayhar's testimony on HB 2479 be incorporated into the public hearing on HB 2436. Further notes that the Oregon State Police have indicated that Mr. Mayhar may be a security risk and states that the committee is now in work session and public testimony is out of order.
086	Chair Mannix	Let us amend HB 2436 by inserting language to include a provision that allows the court to extend the transportation requirement for an additional 72 hours for good cause shown. Let us also add a provision that the Superintendent of the State Hospital be authorized to extend the transportation and acceptance of the patient requirement by 72 hours by notifying the appropriate authorities that the hospital does not have the capability to take the patient within the first 72 hours. And let us include a requirement that when transported to the hospital the patient shall be admitted to the hospital.
097	Rep. Prozanski	Could we add a maximum of one 72 hour extension?

102	Chair Mannix	I think we have agreed that only one extension of 72 hours is available and that transportation should wait no longer than six days from the initial determination. I think we had agreed that requiring the court to make this decision was unnecessary. The superintendent would be free to do this also.
111	Rep. Sunseri	Aren't we creating a step that is not necessary by requiring the court to make this decision? Transportation will depend on logistics.
120	Rep. Simmons	Discusses delays in transport due to staff coverage and bad weather. What is the penalty if the time frame isn't met?
126	Chair Mannix	There is no sanction. I suppose a lawsuit could be brought.
131	Rep. Simmons	I thought the judge could authorize a third extension.
134	Rep. Prozanski	No.
144	Rep. Simmons	I would be comfortable saying that every reasonable effort should be made.
145	Chair Mannix	If we change "must" to "shall", then if there are extraordinary circumstances a lapse could be tolerated. Indicates page 2, line 2 of HB 2436.
151	Rep. Bowman	I am concerned about changing "must" to "shall." This is something we want to happen. I would not support that change.
161	Chair Mannix	I believe the court already has the authority under this section of the statutes to allow delays for extraordinary circumstances. We may be back where we started.
176	Rep. Prozanski	We normally use "shall" in the statutes. I don't see it as a discretionary term like "may". The concern I have is, if it is just a pure administrative process, the documentation may not get into the court file. We may be setting up potential litigation.
194	Chair Mannix	What if we put in a provision that the Superintendent must notify the court when he invokes the 72 hour extension?
198	Rep. Sunseri	I was concerned about over burdening the courts.
203	Chair Mannix	Lets break down the conceptual amendments into smaller pieces.
204	Rep. Mannix	<b>MOTION: Moves to AMEND HB 2436 on on page 2, in line 2, change "must" to "shall".</b>

		<b>VOTE: 6-1</b>  <b>AYE: 6</b> ñ Gianella, Hansen, Prozanski, Simmons, Sunseri, Mannix  <b>NAY: 1</b> ñ Bowman
	<b>Chair Mannix</b>	<b>The motion CARRIES.</b>
<b>210</b>	<b>Rep. Mannix</b>	<b>MOTION: Moves to AMEND HB 2436 by inserting that the court may extend the transportation requirement for 72 hours upon good cause shown.</b>
		<b>VOTE: 7-0</b>
	<b>Chair Mannix</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>217</b>	<b>Sen. Mannix</b>	<b>MOTION: Moves to AMEND HB 2436 by inserting that the Superintendent of the State Hospital may extend the transportation requirement by 72 hours due to patient capacity limitations provided that the superintendent notifies the court of the extension. The State Hospital must admit the patient upon arrival if all these conditions are met.</b>
		<b>VOTE: 7-0</b>
	<b>Chair Mannix</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>236</b>	<b>Rep. Bowman</b>	If the county requests a 72 hour extension, is the Superintendent prohibited from requesting an extension?
<b>244</b>	<b>Chair Mannix</b>	In no event should the transfer be delayed beyond 6 days.
<b>245</b>	<b>Rep. Bowman</b>	<b>MOTION: Moves to AMEND HB 2436 inserting that in no event shall the transportation be delayed more than six days.</b>

265	Rep. Hansen	I have no problems with a 6 day transport requirement, but I would like it understood that there can be mitigating circumstances.
276	Chair Mannix	If the transportation requirement can't be met because of emergency, it shall be documented and all available means would be used to transport as soon as possible.
284	Rep. Prozanski	Perhaps put in an escape clause for the six day limit.
287	Rep. Mannix	<b>MOTION: Moves to AMEND the previous motion by adding, "unless in an emergency the court determines otherwise."</b>
		<b>VOTE: 7-0</b>
		<b>Chair Mannix</b>
		<b>Hearing no objection, declares the motion CARRIED.</b>
297	Chair Mannix	Agrees to bring back the bill once amended for a further work session.
309	Counsel Horton	Are the six days cited calendar days or business days?
314	Chair Mannix	Calendar days. Closes work session on HB 2436. Adjourns meeting at 10:20 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

#### EXHIBIT SUMMARY

**A ñ HB 2479, written testimony of Phillip Lemman dated March 2, 1999, 9 pp**

**B ñ HB 2479, minutes of the Oregon Criminal Justice Commission dated October 21, 1997, 7 pp**

**C ñ HB 2480, written testimony of Phillip Lemman dated March 2, 1999, 1 pp**

**D ñ HB 2436, written testimony of Bob Joondeph, 2 pp**

**E ñ HB 2436, written testimony from Barry Kast dated March 2, 1999, 2 pp**